

## ORDER

Alcoser was convicted after a jury trial of first degree murder. (Doc. 18-1, p. 12) On April 17, 1996, the trial court gave Alcoser a sentence of imprisonment for his natural life. (Doc. 13-1, p. 16)

1 On direct appeal, Alcoser argued (1) his sentence was improper, (2) the evidence was  
2 insufficient to find felony murder, (3) the trial court should have given a lesser included  
3 instruction, (4) the trial court should have permitted impeachment of witness Montano, (5)  
4 the trial court erred by “death qualifying” the jury, and (6) the prosecutor’s closing argument  
5 was error. (Doc. 18-1, p. 23) Nevertheless, the Arizona Court of Appeals affirmed Alcoser’s  
6 conviction and sentence on May 29, 1997. (Doc. 18-2, p. 38) The Arizona Supreme Court  
7 denied Alcoser’s petition for review on December 16, 1997. (Doc. 18, p. 3) Alcoser did not  
8 file a petition for review with the U.S. Supreme Court. (Doc. 18, p. 4)

9 On February 6, 1998, Alcoser filed notice of post-conviction relief. (Doc. 18, p. 3) He  
10 argued (A) trial counsel was ineffective for failing to present mitigating evidence at sentencing  
11 and (B) an intervening change in the law affected the burden of proof. (Doc. 18, p. 3) The trial  
12 court denied the petition on December 9, 1998. (Doc. 18-3, pp. 17, 21) The Arizona Court of  
13 Appeals granted review but denied relief on July 27, 1999. (Doc. 18-3, p. 55) Alcoser did not  
14 file a petition for review with the Arizona Supreme Court. (Doc. 18, p. 3)

15 On May 30, 2013, Alcoser filed the pending amended petition for writ of habeas corpus  
16 pursuant to 28 U.S.C. § 2254. (Doc. 12) Alcoser claims (1) “They didn’t follow the due  
17 process of witnesses also sentencing procedures even the criminal procedures like double  
18 jeopardy falling again on the same witnesses,” (2) “The sentence was handed down to[o] harsh  
19 of times . . . , and (3) “[T]he counsel was not discovering evidence, witnesses, colorable  
20 claims.” (Doc. 12)

21 On July 23, 2013, the respondents filed an answer arguing among other things that the  
22 petition is time-barred. (Doc. 18) Alcoser did not file a reply but did file two notices captioned  
23 “[New finding of probate cause] Rule 5.5” (Docs. 19, 21) He also filed what appears to be a  
24 notice of appeal with the Ninth Circuit, which apparently was forwarded to the district court.  
25 (Doc. 23) The respondents are correct. The petition is time-barred.

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1 Alcoser did not explain in his petition why the one-year statute of limitations does not  
2 bar his petition. (Doc. 11, p. 19) He did not file a reply arguing the limitation period should  
3 be equitably tolled.

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5 Certificate of Appealability

6 Rule 11(a) of the Rules Governing Section 2254 Cases, requires that in habeas cases  
7 “[t]he district court must issue or deny a certificate of appealability when it enters a final order  
8 adverse to the applicant.”

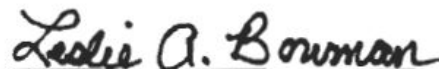
9 Here, the court declines to issue a certificate of appealability because the petitioner has  
10 not “made a substantial showing of the denial of a constitutional right,” as required under 28  
11 U.S.C. § 2253(c)(2). Reasonable jurists would not find the court’s conclusions and ruling  
12 debatable. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Accordingly,

13  
14 IT IS ORDERED that the amended petition for writ of habeas corpus filed on May 30,  
15 2013, by Joseph Anthony Alcoser, is DISMISSED as time-barred.

16 IT IS FURTHER ORDERED denying the petitioner a certificate of appealability.

17 The Clerk is directed to prepare a judgment and close the case.

18 DATED this 29<sup>th</sup> day of April, 2014.

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Leslie A. Bowman  
22 United States Magistrate Judge  
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